IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VIRGINIA.

AFFIDAVIT OF GEORGE H. BURT, WITH BILL.

Frank Seaman, Plaintiff,
against
Berliner Gramophone Company, Defendant.
} IN EQUITY.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
COUNTY OF NEW YORK,
} *ss:*

GEORGE H. BURT, being duly sworn, deposes and says:—

I live at Milburn, New Jersey, and am a manufacturer of composition goods.

Q. Where is your business located?

A. At Milburn. I am acquainted in a general way with the establishment and business of the Duranoid Manufacturing Company, whose works are located at No. 6 Prospect Street, Newark, New Jersey.

Q. Do you know in a general way, of your own knowledge, that they are engaged in making these records, in any way, for the Berliner Gramophone Company?

A. The Duranoid Company have, for a considerable time last past, been engaged in manufacturing discs, known as "records," for use on the Berliner Gramophone, making the same for the Berliner Gramophone Company, and shipping them to the said company.

For a considerable time, the Berliner Gramophone Company, the defendant in the above-entitled action, has obtained the greater part of its records, from said Duranoid Company.

At the request of Mr. Frank Seaman, I have recently made an investigation as to the progress of work upon such records in said factory.

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I began making inquiries about two weeks ago, obtaining information through employés of said factory with whom I am well acquainted, and through employés of my own factory, who are acquainted with the employés of said factory.

In such manner and through other numerous sources of information, I have learned that said Duranoid Company has, during such period, been actively engaged in producing records for matrices furnished to it, by the Berliner Gramophone Company, the defendant, and that large numbers of such records have been shipped by said Duranoid Company, to the defendant.

Said Duranoid Company have been employing, in the work of stamping such records, from four to seven men per day during such time, and each of such men in said work produces about three hundred records per day.

During such time, I have obtained information of shipment of goods to Philadelphia, consigned to the Berliner Gramophone Company, the defendant, but have been unable to obtain information as to the exact number of such shipments.

It will be impossible for the plaintiff herein, to obtain affidavits from those, from whom I obtained this information, for the reason that they are employed by said Duranoid Company, and treat all matters, learned in their employment, as confidential; this information, above set forth, having been obtained by me, without the knowledge of such employés, that I was obtaining the same for the use of the plaintiff.

GEORGE H. BURT.

Subscribed and sworn to before me this 22nd day of June, 1900.

[SEAL]

EMIL T. FUESS,
Notary Public, No. 69,
New York Co., N. Y.

And on the same day the

Decree Filing Bill

Frank Seaman, Plain

vs.

Berliner Gramophone Co
Defendant.

Upon motion of the pla
Morse and Geo. E. Sipe, h
the plaintiff's bill, this day
and the affidavits of Franl
Judge, and Geo. R. Burt,
of June, 1900, this court
the same is hereby award
liner Gramophone Comp
agents, until the further o
livering, or otherwise disp
ting or allowing any such
within the United States
records, matrices or goods
fendant company, and refe
it, with the plaintiff, and da
and exemplified with the
wise disposing of or allo
goods wherein the plainti
son or persons than the s
him, save in so far as the
sell, deliver, or dispose
and stockholders, not fo
the District of Columbia,
contract, and except, als
entitled to make, under
Nellis, mentioned in the
livery exist.

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Certificate of Incorporation

of

The Burt Company

Dated, August 24th, 1900.

Recorded in book [illegible]
of Corporations, in the office of
Secretary of State, page [illegible]

J. E. Ludden,
Counselor at Law,
217 Park Row,
New York.

FILED
AUG 30 1900

CERTIFICATE OF INCORPORATION

OF

THE BURT COMPANY

THIS IS TO CERTIFY, That we, Clifford D. Boobe, Chester R. Hoag and Robert H. McCutcheon, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations, Revision of 1896", and the several supplements thereto and do for the purpose of forming such corporation, hereby mentioned, and to that end we do, by this, our Certificate, set forth:

FIRST: The name of the corporation is THE BURT COMPANY.

SECOND: The location of its principal office in this State is at its factory, on the Owen McCabe property, on Kilburn Avenue, in the Town of Kilburn, in the County of Essex, and the name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is William H. Hoyt.

THIRD: The objects for which, and for any of which the corporation is formed, are to carry out and do the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world, as the Directors may, from time to time, determine upon, viz:

(a) The manufacture and sale of billiard balls, pool balls, and composition goods, including the acquisition by purchase, by manufacture or otherwise, of all material, supplies, machinery and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

(b) To manufacture, purchase or otherwise acquire goods, wares, merchandise and personal property of every class and description, and to hold, own, mortgage, sell or otherwise dispose of, trade,

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deal in and deal with the same.

(c) To acquire and undertake the good will, property, rights, franchises and assets of every kind and the liabilities of any person, firm, association or corporation, either wholly or partly, and to pay for the same in cash, stock of the corporation, bonds or otherwise.

(d) To enter into, make, perform, and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

(e) To borrow or raise money without limit as to amount by the issue of or upon debentures or debenture stock, or in such other manner as the corporation shall think fit.

(f) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferrable instruments, in and about the said business so to be carried on by said corporation.

(g) To apply for, register, purchase or otherwise acquire, and to hold, own, use and operate, and to sell, assign, grant such licenses in respect of or otherwise dispose of, and deal with and turn to account any and all inventions, improvements, formulae, processes, trade names and trade-marks, copyrights, letters patent of the United States and of any or all foreign countries, and patent rights of all kinds, as the directors thereof may, at any time, deem for the interest of said corporation.

(h) To conduct business in any of the states, territories, in the District of Columbia, colonies, or dependencies of the United States, and in any and all foreign countries, to have one or more offices therein, to hold, purchase, mortgage and convey real and personal property without limit as to amount, in any state, territory, colony, dependency, district or foreign country, but always subject to the laws thereof.

(i) To remunerate any person or corporation for services

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rendered, or to be rendered, in placing or assisting to place, or guaranteeing the placing of any of the shares of stock of the corporation, or any debentures or other securities of the corporation, or in or about the formation or promotion of the corporation or in the conduct of its business.

(j) To do any or all the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

(k) In general, to carry on any business in connection with the foregoing, whether manufacturing or otherwise, not prohibited by said act, and to have and to exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinbefore referred to; it being herein expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation, except as limited by the Act under which the Company is created.

FOURTH: The total authorized capital stock of this corporation is $300,000.00, divided into 3,000 shares of the par value of $100. each. Of said stock 1,500 shares shall be preferred stock, and the balance, 1,500 shares shall be common or general stock. Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the Corporation shall be bound to pay a fixed yearly 7% cumulative dividend thereon, at the rate of and not exceeding 7% per annum, payable quarterly, on the First day of November, February, May and August, in each year, before any dividend shall be set apart or paid on the common stock. Such preferred stock shall, at the discretion of the Corporation, be subject to redemption at 105 on January 1st, 1905, or on any dividend date thereafter. Such preferred stock may be issued at and when the Board of Directors may determine. The holders of the preferred stock shall, in case of liquidation or dissolution of the Corporation, be entitled to be paid in full before any amount shall be paid

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the holders of the general or common stock. The holders of said preferred stock may choose Three directors, and the holders of the general stock may choose six directors.

FIFTH: The names and post office addresses of the incorporators, and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this company will commence business, are as follows:

NAME.	POST OFFICE ADDRESS.	NO. OF SHARES.
Clifford D. Beebe,	Milburn, N. J.	4
Chester R. Hoag,	Milburn, N. J.	3
Robert H. McCutcheon,	Milburn, N. J.	3

SIXTH: The period of existence of this corporation is unlimited.

SEVENTH: The affairs of this Company shall be managed by a Board of Directors, (nine in number,) to be elected by the stockholders of this company, and, at all of its elections for directors, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and each stockholder may cast all of such votes for a single director, or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

It shall require the vote of the holders of not less than seventy-five per centum of the entire capital stock of this company to make, alter, amend or rescind any of its By-laws, to fix the amount to be reserved as its working capital, to authorize and cause to be executed mortgages and liens, without limit as to amount upon the real and personal property of this corporation.

With the consent in writing of and pursuant to a vote of the holders of at least seventy-five per centum of the capital stock of the company, issued and outstanding, the directors shall have power and authority to sell, assign, transfer, or otherwise dispose of,

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the whole property of this Corporation.

The directors shall from time to time determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stock-holder shall have any right to inspect any account, book or document of the corporation, except as conferred by statute, or authorized by the directors, or by a resolution of the stockholders.

The Board of Directors, in addition to the powers and authorities by statute and by the By-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided that no regulations so made shall invalidate any provisions of this Charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

The corporation may, in its By-laws, confer powers additional to the foregoing upon the directors, and may prescribe the number necessary to constitute a quorum of its Board of Directors, which number may be less than a majority of the whole number.

The directors shall have power to hold their meetings, except that for its annual election, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State, at such places as may from time to time be designated by them.

It is the intention that the objects specified in paragraph "Third" shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from, the terms of any other clause or other paragraph in this Charter, but that the objects specified in each of the clauses of said paragraph "Third" shall be registered as independent objects.

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IN WITNESS WHEREOF, we have hereunto set our hands and seals the 24th day of August, A. D., Nineteen hundred.

Signed, sealed and delivered
in presence of

Clifford D. Beebe
Chester R. Hoag
Robert H. McCutcheon

State of New York,)
: ss:
County of New York,)

On this 24th day of August, 1900, before me personally appeared Clifford D. Beebe, Chester R. Hoag and Robert H. McCutcheon, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

Clifford E. Dunn.
NOTARY PUBLIC, KINGS COUNTY.
CERTIFICATE FILED NEW YORK CO.

Clerk's Office of the County of Essex, on the [illegible] day of May, A. D., 1900, and recorded in Book 20 of Mort. Cons. for said County, Page 270

William O. Kreiser Clerk.

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IN WITNESS WHEREOF, we have hereunto set our hands and seals the 24th day of August, A. D., Nineteen hundred.

Signed, sealed and delivered in presence of

Clifford D. Beebe
Chester R. Hoag.
Robert H. McCutcheon

State of New York,)
: ss:
County of New York,)

On this 24th day of August, 1900, before me personally appeared Clifford D. Beebe, Chester R. Hoag and Robert H. McCutcheon, to me known and known to me to be the individuals described in and who executed the foregoing instrument; and they severally acknowledged that they executed the same for the uses and purposes therein

State of New York, } ss.
County of New York, }

I, WILLIAM SOHMER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That

Clifford C. Dunn

whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and written, was, at the time of taking such proof and acknowledgment, a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 24 day of August 1900

Wm Sohmer Clerk.

in the

20 day of Aug, A. D., 1900, and recorded in Book 20 of in Bus. Cos. for said County, Page 270

William O. Kueber Clerk.

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